IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. No.59 of 1997
Date of decision: 06.09.2006

Commissioner of Income Tax

---Petitioner

Vs.

M/s Mehta Cut Piece Cloth House.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. Yogesh Putney, Advocate
for the petitioner.

ORDER:

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh, arising out of its order dated 31.05.1989 in respect of assessment year 1978-79 in compliance of direction of this Court in order dated 26.11.1996 in I.T.C. No.17 of 1990:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the action of the AAC in cancelling the assessment order framed by the Assessing Officer on 14.3.1985 u/s 143(3) in pursuance of order passed u/s 263 by the CIT when the Tribunal has already referred the question to the Hon'ble High Court for its esteemed opinion against its own order dated 12.12.1986 in R.A. No.263/Chandi/85 arising out of I.T.A. No.333/Chandi/83?"

The assessee firm derives income from purchase and sale of cloth. While processing the case of the assessee for assessment year 1978-79 u/s 143(3) of the Income-tax Act, 1961 (for short, "the Act"), the Assessing Officer proposed

an addition of Rs.22,849/- on the ground that the assessee had inflated its purchase. The above addition was not approved by the then Inspecting Assistant Commissioner on petition moved by the assessee u/s 144A of the Act. Accordingly, the Assessing Officer framed the assessment u/s 143(3) of the Act without making the proposed addition of Rs.22,849/-. The order of the Assessing Officer was cancelled by the Commissioner of Income Tax u/s 263 of the Act by holding that the order passed by the Assessing Officer by not making the addition of Rs.22,849/- on account of inflated purchases was erroneous and prejudicial to the interests of the revenue within the meaning of section 263 of the Act. The Commissioner of Income Tax, accordingly set aside the assessment made by the Assessing Officer with the direction to reframe the same in accordance with law.

Though the view taken by Commissioner of Income Tax was set aside by the Tribunal vide order dated 29.07.1985 on the ground that the Commissioner of Income Tax was competent to invoke the jurisdiction under Section 263 of the Act in respect of the order passed by the Income Tax Officer in consequence of a direction issued by Inspecting Assistant Commissioner under Section 144-A of the Act. However, the Assessing Officer completed fresh assessment in accordance with the directions given in order under Section 263 of the Act. Appeal of the assessee was accepted by the Commissioner of Income Tax (Appeals) and further appeal of the revenue was dismissed by the Tribunal on 31.05.1989.

We are of the view that the question has to be answered in favour of the revenue in view of judgment of Hon'ble Supreme Court in ***T.N.Civil Supplies Corporation Ltd.*** ***v.*** ***Commissioner of Income-tax*** 2003 (260) ITR 82, wherein the question was as under:-

> "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the Commissioner of Income-tax had no jurisdiction under section 263 to revise an order passed by the Income-tax Officer with the approval of the Inspecting Assistant Commissioner under section 144B?"

Dealing with the question, Hon'ble Supreme Court observed:-

"Given the uniformity of interpretation by the several High Courts, it would not be appropriate to interfere with the decision of the High Court.

In any event we are of the view that having regard to the subsequent amendments to the Act issued from time to time there was no scope for limiting the phrase "order passed by the Income-tax Officer" in section 263 to exclude orders passed by the Income-tax Officer on the directions of a superior authority either under section 144A or 144B."

In view of above, the question is answered in favour of the revenue and against the assessee.

(ADARSH KUMAR GOEL)
JUDGE

September 06, 2006
ashwani

(RAJESH BINDAL)
JUDGE